IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 18TH OCTOBER 2007 / 26TH ASWINA 1929

Crl.Rev.Pet.No. 3505 of 2007()

CRA.35/2006 of ADDL. SESSIONS COURT (ADHOC)-II, KALPETTA
CC.287/2004 of JUDL.MAGISTRATE OF FIRST CLASS, SULTHANBATHERY

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REVN. PETITIONER: APPELLANT/ACCUSED

T.M.SUNNY, S/O.MATHEW, THOTTATHIL HOUSE, VADUVANCHAL P.O., AMBALAVAYAL, BATHERY TALUK, WAYANAD DISTRICT.

BY ADV. SRI.GRASHIOUS KURIAKOSE

RESPONDENTS: RESPONDENTS/COMPLAINANT & STATE

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1. T.V.GEORGE, S/O.ULAHANNAN VARKEY, THEKEYATAYIL (H), CHELLANKODE, MOOPAINAD, BATHERY, WAYANAD.

2. STATE OF KERALA, REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. K.M. K.M. FIROZ

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 18/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P. No. 3505 of 2007

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Dated: 18-10-2007

ORDER

The revision petitioner who was the accused in C.C. No. 287 of 2004 on the file of the J.F.C.M.-I, Sulthan Bathery for offences punishable under Sections 420, 468 and 471 I.P.C. challenges the conviction entered and the sentence passed against him for the aforementioned offences.

2. The case of the prosecution can be summarised as follows:-

The accused dishonestly induced P.W.1 to lend a sum of Rs. 35,000/- promising to repay the same within one month and acting on his representation the complainant gave Rs. 35,000/- to the accused as a loan. Subsequently on 17-2-2002, when the complainant (P.W.1) demanded the money back, the accused issued Ext.P1 forged cheque in the account maintained by the Director, Malankara Catholic Youth Movement, S. Bathery Diocese , drawn on the S. Bathery Branch of the Canara Bank, and which account had been closed long ago in the year 1984. The accused has thereby committed the aforementioned offences.

2. On the side of the prosecution two witnesses were examined as P.Ws 1 to 2 and six documents were got marked as Exts.P1 to P6. The accused denied the incriminating circumstances put to him during his examination under Sec. 313 (1) (b) Cr.P.C. and maintained his innocence. The accused examined the nephew of the complainant as D.W1 and also got marked Exts. D1 and D2.

3. The learned Magistrate, after trial as per judgment dated 31-01-2006 rejected the defence version and found the accused guilty of the offences charged against him. For the conviction under Sec. 420 I.P.C. and 468 he was sentenced to simple imprisonment for two years and to pay a fine of Rs. 2,000/- each and on default to pay the fine to suffer simple imprisonment for one month. For the conviction under Sec. 471 I.P.C. he was sentenced to suffer simple imprisonment for one year and to pay a fine of Rs. 1,000/- and on default to pay the fine, to suffer simple imprisonment for one month. The substantive sentences of imprisonment were directed to run concurrently. Aggrieved by the conviction and sentence, the revision petitioner filed Crl.A. No. 35 of 2006 before the Sessions Court, Kalpetta and as per judgment dated 30-07-2007 the Addl. Sessions Judge (Adhoc-II), Kalpetta dismissed the appeal confirming the conviction entered and the sentence passed against him. Hence, this revision.

4. Even though the learned counsel appearing for the revision petitioner assailed the conviction entered against him on various grounds, since the conviction has been recorded concurrently by the courts below, after a careful evaluation of the oral and documentary evidence in the case, this Court sitting in revision will be loathe to interfere with the said conviction which is accordingly confirmed.

5. What now survives for consideration is the adequacy or otherwise of the sentence imposed on the petitioner. On the facts and circumstances of the case, I do not think that the revision petitioner deserves penal servitude by way of incarceration for his conviction. I am of the view that interests of justice will be adequately met by issuing appropriate direction to undergo imprisonment till rising of the court and to compensate the victims of

P.W.1 for the loss incurred by him. In fact, notwithstanding the declaration of the law by the Apex Court calling upon all the criminal courts to liberally exercise the power under Sec. 357 (3) Cr.P.C. to compensate the victims of crimes in **Hari Kishan and State of Haryana v. Sukhbir Singh and others - AIR 1988 S.C. 2127** the courts below have been insensitive to the above mandate. Accordingly, the sentence imposed on the revision petitioner is set aside and instead he is directed to suffer imprisonment till the rising of the court for each of the three offences and to pay a sum of Rs. 35,000/- (Rupees thirty five thousand only) by way of compensation under Sec. 357 (3) Cr.P.C. The compensation amount shall be deposited before the trial court within three months from today, failing which he shall suffer simple imprisonment for three months by way of default sentence. The sentence of imprisonment shall run concurrently. Warrants , if any, pending against the revision petitioner shall not be executed in view of the modification of the sentence as indicated above.

In the result, this revision is disposed of confirming the conviction but modifying the sentence as above.

V. RAMKUMAR,
(JUDGE)

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